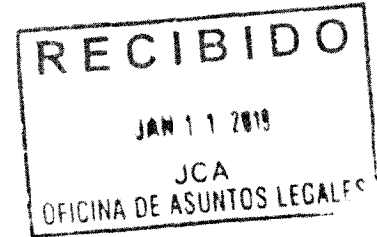


O'NEILL & BORGES LLC
250 MUÑOZ RIVERA AVENUE, SUITE 800
SAN JUAN, PUERTO RICO 00918-1813



JERRY LUCAS MARRERO
MEMBER
767-282-5729

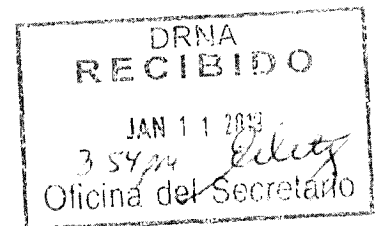
TELEPHONE: (787) 764-8181
TELECOPIER: (787) 753-8944
JERRY.MARRERO@ONEILLBORGES.COM

January 11, 2019

BY MESSENGER

Hon. Tania Vázquez Rivera
Secretary,
Puerto Rico Department of Natural and Environmental Resources
Environmental Agency Building – Cruz A. Matos
San José Industrial Park
1375 Ponce de León Avenue
San Juan, PR 00926-2604

Re: *Environmental Quality Board v. AES Puerto Rico, LP*
Administrative Order No: OA-18-TE-113
Response to Request for Documents



Dear Mrs. Vázquez Rivera:

On behalf of our client, AES Puerto Rico, LP ("AESPR"), we acknowledge receipt of the Administrative Order in reference, dated December 26, 2018 (the "Order"), and, within the timeframe required by the Puerto Rico Department of Natural and Environmental Resources ("DNER"),¹ we hereby provide AESPR's response to the Order and request for the additional time that it was previously agreed with personnel of the Land Pollution Program and Legal Division of DNER for the very same request.² We explain.

As in prior occasions, AESPR hereby responds to the Order in good faith without acknowledging DNER's jurisdiction to issue an Order for matters being voluntarily implemented by AESPR under the federal Coal Combustion Residuals Rule ("federal CCR Rule")³ and without any admission of any allegation of facts or law or conclusion of law that DNER or any third party may make or reach as a result of the Order and AESPR response to the same.

The Order is purportedly based on DNER's powers pursuant Article 9, Section 8 of Act 416-2004 and requires AESPR to submit certain groundwater sampling analyses laboratory

¹ Pursuant to Act 171 of August 2, 2018, the Environmental Quality Board (EQB) has been dissolved and merged into the DNER. According to Section 92 of Act 171, any prior reference to EQB in any law, regulation or official document of the Government, shall be deemed to refer to the DNER. References to Presidents or Executive Directors and to the EQB's Governing Board in any law, regulation or official document of the Government, shall be now deemed a reference to the DNER's Secretary.

² Note that we are submitting this response in the English language for the benefit of the U.S. Environmental Protection Agency who is being copied with this response.

³ See, Act 416 of 2004 and 40 CFR Part 257, *et seq.*

O'NEILL & BORGES LLC

Environmental Quality Board v. AES Puerto Rico, LP
Administrative Order No: OA-18-TE-113
Response to Request for Documents
January 11, 2019
Page 2

reports, including the field documents prepared related thereof and raw data – generated as part of AESPR's voluntary implementation of the federal CCR Rule during a recent sampling event. We note that the Order does not require any information or document related to AESPR's compliance with any particular or specific Section of Act 416 or the Regulations for the Management of Nonhazardous Waste (Regulation No. 5717) or under the Regulation for the Control of Atmospheric Pollution (Regulation No. 5300) or any other Act or regulation under the purview of DNER.

Now, we understand that it is important to mention that via letter dated December 4, 2018, which was addressed to Mr. Carlos González of AESPR, Mrs. Frances Segarra, Interim Manager of the Quality Assurance and Quality Control Area of DNER's Land Pollution Program, made the very same request to AESPR. After having received the letter and days *prior to receiving the Order*, AESPR personnel discussed Ms. Segarra's request with her as well as with other personnel of the Land Pollution Program and Legal Division together and explained, among others, that the sampling event conducted was part AESPR's voluntary implementation of another phase of the federal CCR Rule. It was also discussed that the documents being requested had not been received from the consultant and, most importantly, that the laboratory results of the relevant sampling event were to be published in AESPR's website - as required under the federal CCR Rule. Having discussed the foregoing, the DNER personnel mentioned above agreed then for AESPR to produce the information being requested at the same time it posted the results in its website as required under the federal CCR Rule.

Based on the above and consistent with our understanding from prior discussions with DNER representatives, we respectfully request that the Order be modified through the appropriate channel for AESPR to produce the groundwater monitoring results requested in the Order at the same time AESPR posts them to its website – as the latter is what's required in the federal CCR Rule.⁴ We believe this is appropriate given the specific timeframes for evaluation and publication of groundwater monitoring data in the context and framework of the federal CCR Rule, which was the basis for collecting the groundwater monitoring data.

We are providing a true and exact copy of this response, by certified mail – returned receipt requested, to the following DNER personnel: **Mrs. María Coronado**, Interim Manager, Land Pollution Control Program; **Mrs. Frances Segarra**, Interim Manager of the Quality Assurance and Quality Control Area; **Vilma Ojeda, Esq.**, Office of Legal Affairs; and **Samuel Acosta Camacho, Esq.**, Acting Manager of the Office of Legal Affairs – all at PO Box 11488, San Juan, PR 00910. We are also serving - as a courtesy - a true and exact copy of this response, by certified mail –

⁴ AESPR is responding to the Order and requesting a non-significant modification in good faith to capture a prior agreement with DNER personnel and because the Order requires no further action from AESPR and does not provide for a proposed fine or penalty or administrative hearing. However, AESPR expressly reserves its right to object to DNER's jurisdiction and power to issue the Order or any particular individual request including its right for a public hearing, as well any other available defense including, but not limited to, a potential preemption defense resulting from the recently adopted federal Water Infrastructure Improvements for the Nation Act of 2016 (WIIN Act).

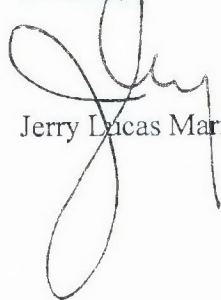
O'NEILL & BORGES LLC

Environmental Quality Board v. AES Puerto Rico, LP
Administrative Order No: OA-18-TE-113
Response to Request for Documents
January 11, 2019
Page 3

returned receipt requested, to the following USEPA personnel: the **Regional Administrator of USEPA**, Region 2, 290 Broadway Avenue, New York, New York, 10007-1866; and, **Mrs. Carmen Guerrero**, USEPA-CEPD, City View Plaza II – Suite 7000, #48 Rd. 165 km 1.2 Guaynabo, PR 00968-8069.

Should you have any question regarding the foregoing, please contact the undersigned at your convenience.

Cordially,



Jerry Lucas Marrero

c: Mr. Jesús Bolinaga
Mr. Héctor Ávila
Mr. Carlos González
Mrs. Angelique Collier

RECEIVED
2019 FEB -5 PM 3:28
U.S. EPA REGION 2
CONTROLLED CORRESPONDENCE

JERRY LUCAS MARRERO, ESQ. [A1849,7051]
O'NEILL & BORGES LLC
250 MUÑOZ RIVERA AVENUE, STE. 800
SAN JUAN, PUERTO RICO 00918-1813

R A
26

REGIONAL ADMINISTRATOR OF USEPA
REGION 2
290 BROADWAY AVENUE
NEW YORK NY 10007-1866

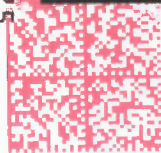
1000731866 0014



CERTIFIED MAIL®



7018 0360 0001 5532 4775



UNITED STATES POSTAGE
PITNEY BOWES
\$ 006.670
02 1P
0000899736 JAN 11 2019
MAILED FROM ZIP CODE 00918